

WILLIAM R. GAECHTER ET AL.

IBLA 82-949

Decided August 16, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 8427 and I MC 8428.

Affirmed.

1. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Abandonment

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before

Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with statutory requirements or to afford claimants any relief from the statutory consequences.

APPEARANCES: Bruce L. Thomas, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal on behalf of William R. Gaechter, Ann Gaechter, Heinrich E. Van Staden, and Evelyn Van Staden is taken from the May 19, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Sheep Eater and Sheep Eater #2 placer mining claims, I MC 8427 and I MC 8428, abandoned and void because no proof of labor or notice of intent to hold was filed with BLM in 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located in July 1932 and August 1938. Copies of the notices of location were filed with BLM November 27, 1978. Proofs of labor were filed with BLM December 29, 1978, March 9, 1979, and October 31, 1980. The proof of labor for 1981 was filed with the appeal.

Appellants state the 1981 assessment work was performed by Dan Browning prior to September 1, 1981. The proof of labor was recorded in Valley County, Idaho, on September 21, 1981, by William Gaechter, who thereafter returned the copies of the recorded instruments to Browning for checking prior to transmittal to BLM. Browning reviewed the instruments, placed them in an envelope correctly addressed to BLM and with postage affixed, and gave the envelope, along with other mail, to Loyal A. Willis, a pilot for Arnold Aviation. Browning is foreman of the Gaechter ranch, adjacent to the claims.

Access to the ranch is only by trail or plane. Outgoing mail is given to the pilots who have always mailed the letters when arriving at their home port. Accompanying the appeal are affidavits of William Gaechter, Dan Browning, and Loyal Willis, detailing what each did in the attempt to get the proofs of labor to BLM. Appellants argue that the presumption of mail being delivered is as strong as the presumption of regularity by administrative officials in the performance of their official duties.

[1] Various presumptions come into play when an appellant alleges timely transmittal of an instrument but BLM has no record of its receipt. On one hand, there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); Phillips Petroleum Co., 38 IBLA 344 (1979). On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. See, e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board has generally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). We believe that public policy considerations dictate that greater weight be given to the presumption of regularity by administrative officials than is accorded the presumption that mail, duly addressed, stamped and deposited, is delivered.

Thus, where BLM states it did not receive the instrument, the burden is on the appellants to show that the instruments were, in fact, timely received by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellants' unsupported statement that the 1981 proofs of labor were transmitted to BLM does not overcome the presumption of regularity. It is the receipt of the instrument which is critical, since filing is not accomplished until the document is actually received by BLM. See 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 CFR 3833.1-2, 3833.2-1, and 3833.4(a).

[3] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owners and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellants, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. As the Board stated in Lynn Keith, supra:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

When BLM did not show receipt of evidence of assessment work for 1981 prior to December 31, 1981, BLM properly declared appellants' mining claims abandoned and void, pursuant to 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Melvin J. Mirkin  
Administrative Judge  
Alternate Member

